

1 KAMALA D. HARRIS
Attorney General of California
2 MARK R. BECKINGTON
Supervising Deputy Attorney General
3 JONATHAN M. EISENBERG
Deputy Attorney General
4 State Bar No. 184162
300 South Spring St., Ste. 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-6505
6 Fax: (213) 897-1071
E-mail: jonathan.eisenberg@doj.ca.gov
7 *Attorneys for Defendant California Attorney
General Kamala D. Harris*

8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA
11 WESTERN DIVISION

12
13 **CHARLES NICHOLS,**

14 Plaintiff,

15 v.

16 **EDMUND G. BROWN JR., in his**
17 **official capacity as Governor of**
18 **California, KAMALA D. HARRIS, in**
19 **her official capacity as Attorney**
20 **General of California, CITY OF**
21 **REDONDO BEACH, CITY OF**
22 **REDONDO BEACH POLICE**
23 **DEPARTMENT, CITY OF**
24 **REDONDO BEACH POLICE**
25 **CHIEF JOSEPH LEONARDI and**
26 **DOES 1 to 10,**

27 Defendants.

2:11-cv-09916-SJO-(SS)

**STATEMENT OF GENUINE
DISPUTES**

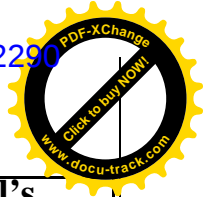
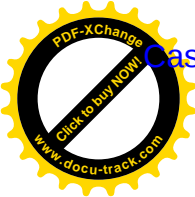
Date:	N/A
Time:	N/A
Crtrm.:	23—3 rd Flr.
Judge:	Hon. Suzanne H. Segal
Trial Date:	Not Yet Set
Action Filed:	Nov. 30, 2011

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29 Defendant Kamala D. Harris, Attorney General of California (the “Attorney
30 General”), submits the following statement of genuine disputes in opposition to the
31 motion of Plaintiff Charles Nichols (“Nichols”) for partial summary judgment.

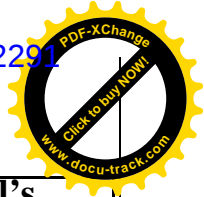
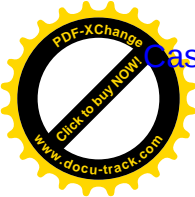
32 L.R. 56-2.

<u>Nichols's Purported Undisputed Fact</u>	<u>Nichols's Support for Undisputed Fact</u>	<u>Attorney General's Response</u>
1. California law bans the Open Carry of loaded firearms in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory. In order to determine whether or not a firearm is loaded for the purpose of enforcing this section, peace officers are authorized to examine any firearm carried by anyone on the person or in a vehicle while in any public place or on any public street in an incorporated city or prohibited area of an unincorporated territory. Refusal to allow a peace officer to inspect a firearm pursuant to this section constitutes probable cause for arrest for violation of this section. There is no enumerated exemption within this statute.	1. Cal. Penal Code§ 25850. Exhibit A - Brief Of Respondent California Attorney General Kamala D. Harris- Nichols v. Brown 9th Circuit Court of Appeals No. 13-56203- Appellate Dkt #13. pg 3. Dkt., #96 pg 1, lines 22-23.	-- Item #1 is not an asserted fact, but rather a statement of what a law supposedly means. The cited law speaks for itself. -- Disputed that there are no exemptions to California Penal Code section 25850. ¹ As this Court in the instant case already found, all the challenged statutes in this case contain numerous exemptions. <i>Nichols v. Brown</i> , No. CV 11-09916 SJO (SS), 2013 WL 3368922 at *6 (C.D. Cal. Jul. 3, 2013).
2. California law bans the Open Carry of unloaded handguns in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory. There is no enumerated exemption within this statute. A violation of subparagraph (A) of paragraph (1) of subdivision (a) is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment, if both of the following conditions exist:	2. Cal. Penal Code§ 26350. Exhibit B - Brief Of Respondent California Attorney General Kamala D. Harris- Nichols v. Brown 9th Circuit Court of Appeals No. 13-56203 Appellate Dkt #13. pg 5. Dkt., #96 pg 1, lines 22-23.	-- Item #2 is not an asserted fact, but rather a statement of what a law supposedly means. The cited law speaks for itself. -- Disputed that there are no exemptions to Section 26350. As this Court in the instant case already found, all the challenged statutes in this case contain numerous exemptions. <i>Nichols, supra</i> , 2013 WL 3368922 at *6.

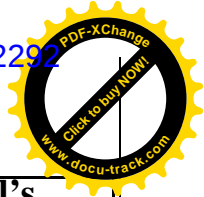
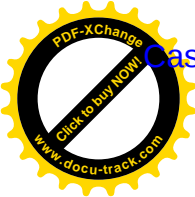
¹ Hereinafter, "Section" means California Penal Code section.



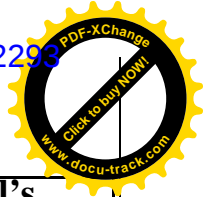
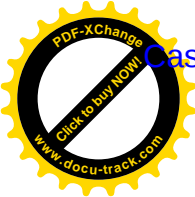
1	<u>Nichols's Purported</u>	<u>Nichols's Support for</u>	<u>Attorney General's</u>
2	<u>Undisputed Fact</u>	<u>Undisputed Fact</u>	<u>Response</u>
3	(A) The handgun and		
4	unexpended ammunition		
5	capable of being discharged		
6	from that handgun are in the		
7	immediate possession of that		
8	person.		
9	(B) The person is not in		
10	lawful possession of that		
11	handgun. Otherwise, a		
12	violation of this section is a		
13	misdemeanor.		
14	3. California law bans the	3. Cal. Penal Code §	-- Item #3 is not an
15	Open Carry of unloaded	26400. Exhibit B - Brief	asserted fact, but rather
16	firearms, other than	of Respondent California	a statement of what a
17	handguns, in any public	Attorney General	law supposedly means.
18	place or on any public street	Kamala D. Harris -	The cited law speaks for
19	in an incorporated city	Nichols v. Brown 9th	itself.
20	outside a vehicle while in the	Circuit Court of Appeals	-- Disputed that there
21	incorporated city or city and	No. 13-56203- Appellate	are no exemptions to
22	county. A violation is	Dkt # 13. pg 5.	Section 26400. As this
23	punishable by imprisonment		Court in the instant case
24	in a county jail not exceeding		already found, all the
25	one year, or by a fine not to		challenged statutes in
26	exceed one thousand dollars		this case contain
27	(\$1,000), or by both that fine		numerous exemptions.
28	and imprisonment, if the		<i>Nichols, supra</i> , 2013
	firearm and unexpended		WL 3368922 at *6.
	ammunition capable of being		
	discharged from that firearm		
	are in the immediate		
	possession of the person and		
	the person is not in lawful		
	possession of that firearm.		
	Otherwise, a violation of this		
	section is a misdemeanor.		
	There is no enumerated		
	exemption within this		
	statute.		
	4. California law bans the	4. Cal. Penal Code §	-- Item #4 is not an
	carrying of concealed	25400.	asserted fact, but rather
	firearms. There is no		a statement of what a
	enumerated exemption		law supposedly means.
	within this statute.		The cited law speaks for
			itself.
			-- Disputed that there
			are no exemptions to
			Section 25400. Section
			26150 et seq. sets forth
			the statutory scheme by
			which a person may
			apply for and obtain a
			license to carry a



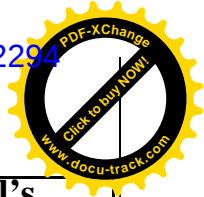
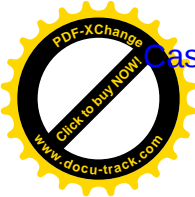
<u>Nichols's Purported Undisputed Fact</u>	<u>Nichols's Support for Undisputed Fact</u>	<u>Attorney General's Response</u>
		concealed firearm.
5. California law theoretically provides for the entirely discretionary issuance of a license to carry loaded and exposed in only that county a pistol, revolver, or other firearm capable of being concealed upon the person where the population of the county is less than 200,000 persons according to the most recent federal decennial census.	5. Cal. Penal Code § 26150 through 26225, inclusive.	-- Item #5 is not an asserted fact, but rather a statement of what a law supposedly means. The cited law speaks for itself. -- Disputed that California law "provides for the entirely discretionary issuance of a license to carry..." Sections 26150, 26155, 26195, and 26200 set forth the rules for the granting or denial of such licenses.
6. California law theoretically provides for the entirely discretionary issuance of a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person, loaded or unloaded. A person must be a resident of the city, city and county, or county unless the applicant's principal place of employment or business is in the county or a city within the county and the applicant spends a substantial period of time in that place of employment or business.	6. Cal. Penal Code § 26150 through 26225, inclusive.	-- Item #6 is not an asserted fact, but rather a statement of what a law supposedly means. The cited law speaks for itself. -- Disputed that California law "provides for the entirely discretionary issuance of a license to carry..." Sections 26150, 26155, 26195, and 26200 set forth the rules for the granting or denial of such licenses.
55. Comparing 2000 to 2003: • The proportion of males charged with PC section 12031 resulting in felony-level filings increased 6.7 percentage points (from 55.6 percent to 62.3 percent); misdemeanor-level filings for males decreased identically. • The proportion of females charged with PC section 12031 resulting in felony-level filings decreased 2.5 percentage points (from 45.7 percent to 43.2 percent); misdemeanor-level filings for females increased	55. Exhibit E- Concealable Firearms Charges in California 2003 – Attorney General - Department of Justice Publication - pg 15.	-- Disputed that the ratio of male persons who violated Section 12031 to male persons charged with violating Section 12031 at the felony level was higher than the ratio of female persons who violated Section 12031 to female persons charged with violating Section 12031 at the felony level. There is no pertinent evidence presented of the underlying point that Nichols appears to be



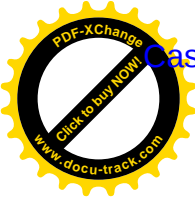
1	<u>Nichols's Purported Undisputed Fact</u>	<u>Nichols's Support for Undisputed Fact</u>	<u>Attorney General's Response</u>
2	identically.		trying to make.
3	56. From 2000 through 2003,	56. Exhibit E -	-- Disputed that the
4	the vast majority of persons	Concealable Firearms	ratio of male persons
5	charged with PC section	Charges in California	who violated Section
6	12031 were male, and males	2003 - Attorney General	12031 to male persons
7	were proportionately more	- Department of Justice	charged with violating
8	likely to be filed on at the	Publication- pg 15.	Section 12031 at the
9	felony level than females.		felony level was higher
10			than the ratio of female
11			persons who violated
12			Section 12031 to female
13			persons charged with
14			violating Section 12031
15			at the felony level.
16			There is no pertinent
17			evidence presented of
18			the underlying point that
19			Nichols appears to be
20			trying to make.
21	57. When charged with PC	57. Exhibit E-	-- Disputed that the
22	section 12031, blacks were	Concealable Firearms	ratio of African-
23	proportionately most likely	Charges in California	American persons who
24	to be filed on at the felony	2003 - Attorney General	violated Section 12031
25	level, followed by Hispanics,	-Department of Justice	to African-American
26	other race/ethnic groups,	Publication- pg 16.	persons charged with
27	and whites. This pattern		violating Section 12031
28	exists throughout the period		at the felony level was
	shown.		higher than the ratio of
			people from other
			racial-ethnic groups
			who violated Section
			12031 to people from
			other racial-ethnic
			groups charged with
			violating Section 12031
			at the felony level.
			There is no pertinent
			evidence presented of
			the underlying point that
			Nichols appears to be
			trying to make.
	66. The vast majority of	66. Exhibit E -	-- Disputed that the
	persons charged with either	Concealable Firearms	ratio of male persons
	former PC section 12025 or	Charges in California	who violated Sections
	former PC section 12031	2003 - Attorney	12025 or 12031 to male
	were male.	General- Department of	persons charged with
		Justice Publication- pg 2.	violating Sections
			12025 or 12031 was
			higher than the ratio of
			female persons who
			violated Sections 12025
			or 12031 to female



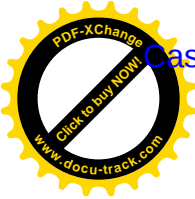
1	<u>Nichols's Purported</u>	<u>Nichols's Support for</u>	<u>Attorney General's</u>
2	<u>Undisputed Fact</u>	<u>Undisputed Fact</u>	<u>Response</u>
3			persons charged with
4			violating Sections
5			12025 or 12031. There
6			is no pertinent evidence
7			presented of the
8			underlying point that
9			Nichols appears to be
10			trying to make.
11	67. When charged with	67. Exhibit E -	-- Disputed that the
12	either PC section 12025 or	Concealable Firearms	ratio of African-
13	PC section 12031, blacks	Charges in California	American persons who
14	were proportionately the	2003 – Attorney	violated Sections 12025
15	most likely race/ethnic group	General- Department of	or 12031 to African-
16	to be filed on at the felony	Justice Publication- pg 2.	American persons
17	level; whites were		charged with violating
18	proportionately the least		Sections 12025 or
19	likely race/ethnic group to be		12031 at the felony
20	filed on at the felony level.		level was higher than
21			the ratio of people from
22			other racial-ethnic
23			groups who violated
24			Sections 12025 or
25			12031 to people from
26			other racial-ethnic
27			groups charged with
28			violating Sections
			12025 or 12031 at the
			felony level.
	68. When charged with PC	68. . Exhibit E –	-- Disputed that the
	section 12025, blacks were	Concealable Firearms	ratio of African-
	proportionately most likely	Charges in California	American persons who
	to be filed on at the felony	2003- Attorney General-	violated Section 12025
	level, followed by Hispanics,	Department of Justice	to African-American
	other race/ethnic groups, and	Publication- pg 6.	persons charged with
	whites. This pattern exists		violating Section 12025
	throughout the period shown.		at the felony level was
			higher than the ratio of
			people from other
			racial-ethnic groups
			who violated Section
			12025 to people from
			other racial-ethnic
			groups charged with
			violating Section 12025
			at the felony level.
	78. The Attorney General	78. Answer to Sec. Am.	-- Disputed that the
	admits to instructing all	Complaint 12.	Attorney General
	issuing authorities in		instructed anyone not to
	California not to issue a		issue a firearms license
	license to openly carry a		to Nichols. The
	handgun to PLAINTIFF and		Attorney General's
	similarly situated individuals		answer to the operative



Nichols's Purported Undisputed Fact	Nichols's Support for Undisputed Fact	Attorney General's Response
<p>on page 1 of her "STANDARD APPLICATION FOR LICENSE TO CARRY A CONCEALED WEAPON (CCW)" prepared by the Attorney General pursuant to California Penal Code section 2617.5 which also provides for her to revise the application form. DEFENDANT HARRIS has refused to either create or revise the application form to accommodate PLAINTIFF'S and similarly situated individuals. Second Amendment right to openly carry a loaded firearm in public for the purpose of self-defense and other lawful purposes.</p>		<p>complaint, which answer Nichols cites, speaks for itself. -- Further disputed that the Attorney General makes any discretionary decisions about the substance of California firearms law by merely fulfilling her obligations with respect to preparing firearms license forms.</p>
<p>89. The "good cause" requirement of the Los Angeles Sheriff's Department is intended to dramatically restrict the number of persons who are secretly armed within the county. In 2011, there was an average of approximately 400 existing concealed permits that were issued by the LASD in a county of some 10 million people.</p>	<p>89. Exhibit H. Decl., of Los Angeles County Under Sheriff Paul Tanaka- Thomson v. Torrance Police Department and the Los Angeles County Sheriff's Department- Dkt #37-1, Case# CV 11-06154 (SJO) weapons (JCx), Judge Otero Presiding- 10-11</p>	<p>-- Disputed. The Los Angeles County Sheriff's Department's ("LACSD") policy regarding concealed weapons licenses is publicly available and does not state or indicate an intent "to dramatically restrict the number of persons who are secretly armed within the county." See Exh. B to Eisenberg Decl. Also, Paul Tanaka is not an employee of LACSD; there is no reason to believe that Mr. Tanaka is presently authorized to state LACSD policy on any matter. See Exh. C to Eisenberg Decl.</p>
<p>99. Plaintiff Nichols seeks to exercise his Second Amendment right to openly carry handguns for the purpose of self-defense and for other lawful purposes, such handguns to be openly</p>	<p>99. Nichols Decl., 9</p>	<p>-- Disputed. Nichols plans to mount a legal challenge to enforcement of California's law prohibiting open carrying of firearms in</p>



1	<u>Nichols's Purported Undisputed Fact</u>	<u>Nichols's Support for Undisputed Fact</u>	<u>Attorney General's Response</u>
2	carried, not encased, both		at least one category of
3	loaded and unloaded, in non-		sensitive public places,
4	sensitive public places within		public schools. See
5	incorporated cities and in		Exh. D to Eisenberg
6	non-sensitive places of		Decl.
7	unincorporated county		
8	territory where the Open		
9	Carry of handguns, both		
10	loaded and unloaded, is		
11	prohibited.		
12	100. Plaintiff Nichols seeks	100. Nichols Decl., 10	-- Disputed. Nichols
13	to exercise his Second		plans to mount a legal
14	Amendment right to openly		challenge to
15	carry long guns for the		enforcement of
16	purpose of self-defense and		California's law
17	for other lawful purposes,		prohibiting open
18	such long guns to be openly		carrying of firearms in
19	carried, not encased, both		at least one category of
20	loaded and unloaded, in non-		sensitive public places,
21	sensitive public places within		public schools. See
22	incorporated cities and in		Exh. D to Eisenberg
23	non-sensitive places of		Decl.
24	unincorporated county		
25	territory where the Open		
26	Carry of handguns, both		
27	loaded and unloaded, is		
28	prohibited.		
	101. Plaintiff Nichols seek to	101. Nichols Decl., 11	-- Disputed. Nichols
	exercise his Second		plans to mount a legal
	Amendment right to openly		challenge to
	carry firearms for the		enforcement of
	purpose of self-defense and		California's law
	for other lawful purposes,		prohibiting open
	such firearms to be openly		carrying of firearms in
	carried, not encased, both		at least one category of
	loaded and unloaded, in,		sensitive public places,
	within and on his motor		public schools. See
	vehicles, attached camper or		Exh. D to Eisenberg
	trailer in non-sensitive public		Decl.
	places within incorporated		
	cities and in non-sensitive		
	places of unincorporated		
	county territory where the		
	Open Carry of firearms, both		
	loaded and unloaded, is		
	prohibited in, within and on		
	his motor vehicles, in non-		
	sensitive public places within		
	incorporated cities and in		
	non-sensitive places of		
	unincorporated counties.		
	111. An unloaded long gun,	111. Nichols Decl., 21	-- Disputed. It is



1	<u>Nichols's Purported Undisputed Fact</u>	<u>Nichols's Support for Undisputed Fact</u>	<u>Attorney General's Response</u>
2	inside of a motor vehicle,		unclear what if any
3	substantially burdens		effect an unloaded long
4	Plaintiff Nichols' right to		gun, by itself, has on
	self-defense.		Nichols's ability to
			defend himself.
5	113. An unloaded firearm,	113. Nichols Decl., 23	-- Disputed. It is
6	fully encased, in a locked or		unclear what if any
7	unlocked container,		effect an unloaded
	substantially burdens		firearm, by itself, has on
	Plaintiff Nichols' right to		Nichols's ability to
	self-defense.		defend himself.
8	118. Plaintiff Nichols	118. Nichols Decl., 28	-- Disputed. As
9	received a death threat via		Nichols has admitted,
10	email which was reported to		LACSD determined that
11	both the Attorney General		what Nichols claims
	and the Los Angeles Sheriffs		was a death threat did
	department.		not meet the definition
			of a death threat. See
			item #123, below.
12	123. The conclusion of the	123. Nichols Decl., 133	(No response. This item
13	Los Angeles Sheriffs		is reprinted in reference
14	Department Sergeant Inge		to the above-given
15	was that someone who		discussion of item
16	threatened to shoot Plaintiff		#118.)
17	Nichols and called upon		
	others to track him down and		
	do the same was not		
	committing a criminal		
	offense because the email did		
	not use the word "kill."		

Dated: December 2, 2013

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
MARK R. BECKINGTON
Supervising Deputy Attorney General

/s/
JONATHAN M. EISENBERG
Deputy Attorney General
*Attorneys for Defendant California
Attorney General Kamala D. Harris*